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10 CFR Ch. X (1–1–10 Edition)

U.S.C. 551(4) under a specific set of facts, pursuant to subpart B of this part.

Federal legal holiday means the first day of January, the third Monday of January, the third Monday of February, the last Monday of May, the fourth day of July, the first Monday of September, the second Monday of October, the eleventh day of November, the fourth Thursday of November, the twenty-fifth day of December, or any other calendar day designated as a holiday by federal statute or Executive order.

OHA means the Office of Hearings and Appeals of the Department of Energy.

Order means the whole or a part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of DOE in a matter other than rulemaking but including licensing. This definition does not include internal DOE orders and directives issued by the Secretary of Energy or delegate in the management and administration of departmental elements and functions.

Person means any individual, firm, estate, trust, sole proprietorship, partnership, association, company, joint-venture, corporation, governmental unit or instrumentality thereof, or a charitable, educational or other institution, and includes any officer, director, owner or duly authorized representative thereof.

Proceeding means the process and activity, and any part thereof, instituted by the OHA, either on its own initiative or in response to an application, complaint, petition or request submitted by a person, that may lead to an action by the OHA.

SRO means a special report order issued pursuant to §1003.8(b) of this part.

(b) Throughout this part the use of a word or term in the singular shall include the plural, and the use of the male gender shall include the female gender.

§ 1003.3 Appearance before the OHA.

(a) A person may make an appearance, including personal appearances in the discretion of the OHA, and participate in any proceeding described in this part on his own behalf or by a duly

authorized representative. Any application, appeal, petition, or request filed by a duly authorized representative shall contain a statement by such person certifying that he is a duly authorized representative. Falsification of such certification will subject such person to the sanctions stated in 18 U.S.C. 1001.

(b) *Suspension and disqualification.* The OHA may deny, temporarily or permanently, the privilege of participating in proceedings, including oral presentation, to any individual who is found by the OHA—

(1) To have made false or misleading statements, either verbally or in writing;

(2) To have filed false or materially altered documents, affidavits or other writings;

(3) To lack the specific authority to represent the person seeking an OHA action; or

(4) To have engaged in or to be engaged in contumacious conduct that substantially disrupts a proceeding.

§ 1003.4 Filing of documents.

(a) Any document filed with the OHA must be addressed as required by §1003.11, and should conform to the requirements contained in §1003.9. All documents and exhibits submitted become part of an OHA file and will not be returned.

(b) A document submitted in connection with any proceeding transmitted by first class United States mail and properly addressed is considered to be filed upon mailing.

(c) Hand-delivered documents to be filed with the OHA shall be submitted to 950 L'Enfant Plaza, SW., Washington, DC, during normal business hours.

(d) Documents hand delivered or received electronically after regular business hours are deemed filed on the next regular business day.

[60 FR 15006, Mar. 21, 1995, as amended at 63 FR 58289, Oct. 30, 1998]

§ 1003.5 Computation of time.

(a) *Days.* (1) Except as provided in paragraph (b) of this section, in computing any period of time prescribed or allowed by these regulations or by an order of the OHA, the day of the act,

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event, or default from which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday, or federal legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or a federal legal holiday.

(2) Saturdays, Sundays and federal legal holidays shall be excluded from the computation of time when the period of time allowed or prescribed is 7 days or less.

(b) *Hours.* If the period of time prescribed in an order issued by the OHA is stated in hours rather than days, the period of time shall begin to run upon actual notice of such order, whether by verbal or written communication, to the person directly affected, and shall run without interruption, unless otherwise provided in the order, or unless the order is stayed, modified, suspended or rescinded. When a written order is transmitted by verbal communication, the written order shall be served as soon thereafter as is feasible.

(c) *Additional time after service by mail.* Whenever a person is required to perform an act, to cease and desist therefrom, or to initiate a proceeding under this part within a prescribed period of time after issuance to such person of an order, notice or other document and the order, notice or other document is served solely by mail, 3 days shall be added to the prescribed period.

§ 1003.6 Extension of time.

When a document is required to be filed within a prescribed time, an extension of time to file may be granted by the OHA upon good cause shown.

§ 1003.7 Service.

(a) All documents required to be served under this part shall be served personally or by first class United States mail, except as otherwise provided.

(b) Service upon a person's duly authorized representative shall constitute service upon that person.

(c) Official United States Postal Service receipts from certified mailing shall constitute evidence of service.

§ 1003.8 Subpoenas, special report orders, oaths, witnesses.

(a) In accordance with the provisions of this section and as otherwise authorized by law, the Director may sign, issue and serve subpoenas; administer oaths and affirmations; take sworn testimony; compel attendance of and sequester witnesses; control dissemination of any record of testimony taken pursuant to this section; subpoena and reproduce books, papers, correspondence, memoranda, contracts, agreements, or other relevant records or tangible evidence including, but not limited to, information retained in computerized or other automated systems in possession of the subpoenaed person.

(b) The Director may issue a Special Report Order requiring any person subject to the jurisdiction of the OHA to file a special report providing information relating to the OHA proceeding, including but not limited to written answers to specific questions. The SRO may be in addition to any other reports required.

(c) The Director, for good cause shown, may extend the time prescribed for compliance with the subpoena or SRO and negotiate and approve the terms of satisfactory compliance.

(d) Prior to the time specified for compliance, but in no event more than 10 days after the date of service of the subpoena or SRO, the person upon whom the document was served may file a request for review of the subpoena or SRO with the Director. The Director then shall provide notice of receipt to the person requesting review, may extend the time prescribed for compliance with the subpoena or SRO, and may negotiate and approve the terms of satisfactory compliance.

(e) If the subpoena or SRO is not modified or rescinded within 10 days of the date of the Director's notice of receipt:

(1) The subpoena or SRO shall be effective as issued; and

(2) The person upon whom the document was served shall comply with the subpoena or SRO within 20 days of the date of the Director's notice of receipt, unless otherwise notified in writing by the Director.